

**COMMITTEE ON RULES OF PROCEDURE  
IN DOMESTIC RELATIONS CASES**

Friday, January 16, 2004 10:00 am – 3:00 pm

State Courts Building, Conference Room 119

1501 W. Washington, Phoenix, Arizona

Teleconference #: (602) 542-9007

Web Site: <http://www.supreme.state.az.us/drrc/>

**Members Present:**

Hon. Mark Armstrong, Chair

Hon. Norm Davis

Annette Everlove, Esq.

Bridget Humphrey, Esq.

Hon. Michael Jeanes

Janet Metcalf, Esq.

Hon. Dale Nielson

Richard Scholz, Esq.

Robert Schwartz, Esq.

Debra Tanner, Esq.

Hon. Nanette Warner

**Members Not Present:**

Annette T. Burns, Esq.

Deborah Fine, Esq.

Phil Knox, Esq.

Hon. John Nelson

Brian W. Yee, Ph.D.

**Staff Present:**

Konnie K. Young, Esq.

Theresa Barrett

Isabel Gillett

**Members Represented by Proxy:**

None

**Quorum:**

Yes

## **1. Call to Order: Hon. Mark Armstrong**

Judge Armstrong welcomed Committee members, and all present members introduced themselves. Judge Armstrong reviewed the meeting handouts. He asked the Committee to review the minutes from the last meeting on December 12, 2003. Michael Jeanes requested that the minutes be corrected on page 2, section 2A on workgroup #1, third line from the bottom on the first paragraph, which should read “to withdraw paper file access to the public” and on the same line it should read “only provide access to the documents electronically,” scratching the words “via” and “filing” and changing “electronic” to “electronically.”

**Motion: Minutes Approved, with corrections.**

**Seconded**

**Vote: Minutes Approved with corrections**

Judge Armstrong continued reviewing the handouts which included the workgroups for areas IV (Judge Davis, Chair), V (Judge Nelson, Chair) and VI (Judge Warner, Chair); the *Rules of Family Law Procedure*, which was updated from the electronic version; Notice of Limited Scope Representation, provided by Bridget Humphries, which is an appendix to the Rules; memo to Judge Davis from Annette Everlove; the latest version of the working outline; and the Table of Contents and first few rules of the Rules of Procedure in Juvenile Court, provided for the Committee’s information. Judge Davis also distributed information on Rule 2.2.

## **2. Reports from Workgroups and/or Workgroup Meetings**

### **a. Workgroup #1: Sections I & II (Bridget Humphrey, Chair)**

Bridget Humphrey reported for Workgroup #1. They eliminated Rule 7 and replaced it with local Rule 6.3 from Maricopa County. Discussion ensued regarding Rule 401. Judge Armstrong said that he believed we should not refer to 401 at all, and just refer to 409 and 415. Discussion ensued.

Bridget asked if she should go through everything line by line. Judge Armstrong stated that at some point everyone would need to go through all of these and reflect on them. However, Judge Armstrong stated that if we have to go through every line now for rules that do not need the discussion of the whole group, we will not get to the individual workgroup meetings. Judge Armstrong emphasized that the fact that we are going over these (rules) does not mean we are approving them.

Bridget gave some general changes:

**In Rule 8(b), her workgroup significantly changed the forms of response and denial to simplify the language and eliminate the technicalities of pleading, eliminating affirmative defenses.**

**Under Rule 9, they eliminated section 9(a) Capacity.**

Bridget asked for comments on Rule 12(c), which is motion for judgment on the pleadings. There had been some discussion by the members on eliminating that rule. After discussion, it was decided to leave it in.

Discussion ensued about 12(b)(2), whether to take it out or leave it in and rework Rule 19 to make it more family specific. Judge Armstrong stated that he thought it best that we take it out and rework Rule 19. Janet Metcalf stated that she felt this was a very murky area.

Next, the group discussed Rule 13, addressing counter claims. Bridget said that her workgroup eliminated this rule.

**The decision was made to strike Rule 13 and add the following to Rule 8b:**

**The response may raise any relevant issue or assert claim for relief that is not referenced in the Petition.**

On Rule 14, the workgroup simplified the procedure for bringing in a third party, and did not distinguish between a Petitioner or Respondent.

There were no changes made in Rule 17, 18 or 19. They eliminated class actions.

**TASK: The workgroup will rework the joinder rule in Rule 19.**

**b. Workgroup #2: Section XI (Judge Davis, Chair)**

Judge Davis said that Rule 2.2 is addressed in the Applicability of Rules of Evidence section; he noted his concern that since we only are only including certain rules, someone might take that to mean that we are abrogating the *Rules of Evidence*, and replacing it with these standards. He thought that the Committee should put the following statement in at the end of this section: “The *Arizona Rules of Evidence* shall otherwise apply to family law proceedings. This is an exception, not a replacement.”

Annette Everlove stated that we had been talking about expanding the court’s ability to determine relevant evidence and admissibility without inherent protection against hearsay. On 2(b) she drafted a consolidation of the other comments, but it did not address evidentiary hearings. She said that Pima County grapples with this all the time. She stated that if we are going to relax the rules of evidence, that not only would there have to be good cause, but in order to allow someone to insist on full compliance, they would have to know what possibly deficient evidence would be before the court and file their motion 60 days before the trial if disclosed timely, or ten days after disclosure if it was sooner than 60 days before trial. She wanted comments from the members on this.

Annette stated that on records of regularly conducted activity, she thought the Committee had already discussed this and thought it was a good idea. She added that on number 3, she transposed “may” for “shall.”

**Judge Armstrong asked for discussion; after discussion regarding 2.2(b), the decision was made to add the following language:**

**Before “All relevant evidence is admissible, provided,” “EXCEPT AS OTHERWISE SET FORTH IN THESE RULES” was added. Also, the last sentence in the paragraph was changed to: Upon REASONABLE NOTICE filed by any party AND UNLESS OTHERWISE ORDERED BY THE COURT, ANY PARTY MAY REQUIRE STRICT COMPLIANCE WITH ALL OR PART OF THE ARIZONA RULES OF EVIDENCE.**

**In 2.2(c), the following was added:**

**After “ii) is supported by testimony” OR OTHER EVIDENCE was added, and then after “iii) is properly” AND TIMELY disclosed AND PROVIDED TO ALL OTHER PARTIES was added.**

**Regarding the Scope of the Rules, the workgroup replaced “speedy” with “prompt” in the last sentence.**

The question was asked as to how to send the amendments that are being made on all the rules to Konnie. Judge Armstrong recommended that since everybody has the latest master set in electronic form, any changes that need to be made could be made to an entire section, and this could be e-mailed to Konnie, who could just cut and paste the actual language that is being recommended.

Regarding the Protected and Unpublished Addresses section, it now states that it is done by first class mail. One member asked if it was okay to go by first class mail rather than certified or registered. It was suggested by Judge Davis that if there is a person who is abused or in hiding, serving by certified or registered mail is made more onerous for that person to try to serve a controlling person, rather than just by first class mail. The Committee was in agreement with this.

Judge Armstrong discussed the process of mailing to protected addresses in Maricopa County. He said that what happens right now is that the person takes their documents to the Clerk's Office, and they pay a \$5.00 fee, then the clerk mails it to a protected address. That is all that they require. Judge Warner said that her clerk mails by certified mail. She stated that they do not proceed until they get the card back. Judge Davis stated that this rule says that whoever mailed it will file a written statement that they mailed the document to the address in their protected files. It is not certified. It is also protected so that if they get it back, it is filed in the court file so that the court would know it was not delivered. Judge Warner asked Judge Armstrong if this had been a problem for him. He replied that it had not; they treat it the same as any other post-pleading or motion which can be done by regular mail to the other side. That is how they are served. He stated that he did not know if they wanted to add the requirement that it must be done by certified mail. He said that if there is an unprotected address, they just allow somebody to file a motion and indicate that they have sent it to someone on the other side. He said that they require personal service initially, but once there has been personal service of the initial pleading, any subsequent pleadings or motions are served by regular mail. This is in that category.

Bob asked if the members had discussed serving by fax. The answer was yes and that it had been added to Rule 5(c).

One member asked to go back to the previous discussion about serving by certified mail, and it was stated that on page 8(a), it says “initial first class mail.” Judge Armstrong explained that it was not intending to say that the initial pleading would be served that way, it meant that the person who files the original pleading, who has a protected address, will be served any subsequent pleadings or motions. Judge Davis noted that when we deleted paragraph (c)(3), we did not go back up to (a) where it says “including post-decree decisions” and delete that phrase. However, upon review of the paragraph, Judge Davis stated that it did not make sense, and he said his workgroup would work on that.

**TASK: Judge Davis and his workgroup will revise this rule.**

**C. Workgroup #3: (Annette Burns, Chair)**

Judge Armstrong noted that Annette was not here today, and asked if anyone had anything from her. Konnie stated that she had received material from Annette regarding Rule 54 which Konnie had included in the *Rules of Family Law Procedure* document.

**LUNCH**

After lunch, the workgroups met.

**3. Next Meeting: Judge Armstong**

The next meeting will be held on February 9, 2004, at the Judicial Education Center, 541 E. Van Buren, Suite B4 in the Copper and Gold conference rooms from 10:00 am – 3:00 pm.

**4. Call to the Public**

There were no public members in attendance.

**5. Adjournment: Judge Armstrong**

Judge Armstrong adjourned the meeting at 3:00 pm.